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A G R E E M E N T

This agreement is made and entered into this 10th day of October 1964, between the Utah State Department of Fish and Game, 1596 West North Temple, Salt Lake City, Utah, hereinafter referred to as the Department, and the Rocky Ford Irrigation Company, a Utah corporation, operating primarily in Beaver County, Utah, hereinafter referred to as the Company.

WHEREAS, the Department is desirous of acquiring a minimum conservation pool for purposes of fish culture in the Rocky Ford Reservoir (sometimes also known as the Minersville Reservoir), such conservation pool to be maintained at all times with a minimum of 2,000 acre feet of water; and,

WHEREAS, the Company is the owner of said Rocky Ford Reservoir and is also the owner of water rights sufficient to impound and maintain a minimum storage conservation pool of 2,000 acre feet, and is desirous of doing so under the terms and conditions of this agreement;

NOW THEREFORE, in consideration of the promises, covenants and conditions hereinafter set forth, it is hereby agreed as follows:

1. The Company agrees to impound and maintain a permanent conservation pool in the Rocky Ford Reservoir of not less than 2,000 acre feet of water, such conservation pool to be utilized by the Department for the purpose of doing all things reasonable or proper in the enhancement of fish life in the reservoir. The water necessary to form the conservation pool shall be impounded according to the following schedule:

- (a) A minimum of 500 acre feet upon the signing of this agreement;
  - (b) An additional 500 acre feet by July 15, 1965 bringing the conservation pool at that time to a minimum of 1,000 acre feet;
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(c) An additional 500 acre feet by July 15, 1966, bringing the conservation pool at that time to a minimum of 1500 acre feet;

(d) An additional 500 acre feet by July 15, 1967, raising the conservation pool to its permanent minimum amount of 2,000 acre feet.

II. The Department will pay to the Company in consideration for the conservation pool herein described the sum of \$220,000, which price is computed at the rate of \$110 per acre foot in said conservation pool. This sum of money shall be paid in the following manner subject to availability of funds:

(a) \$5,000 on or before October 20, 1964;

(b) \$107,500 on or before July 15, 1965;

(c) \$107,500 on or before July 15, 1967.

Installment payments not paid when due shall bear interest at the legal rate from due date until paid.

III. It is understood by the parties that the present capacity of the Rocky Ford Reservoir is approximately 26,500 acre feet, but that the Utah State Engineer has limited the allowable storage to 19,380 acre feet. It is further understood that the Minersville Reservoir and Irrigation Company is entitled to a delivery each irrigation year of 7,500 acre feet of water from the Rocky Ford Reservoir, and that this agreement in no way limits or denies to the Minersville Reservoir and Irrigation Company its existing rights to demand and use said amount of water.

IV. The Company will at all times replace any part of the conservation pool which is lost by evaporation, seepage, and transpiration, so that there will at all times be a permanent minimum conservation pool for the use and benefit of the Department in an amount not less than 2,000 acre feet. If because of severe drought conditions the annual yield of water into the

Rocky Ford Reservoir is not sufficient to satisfy the 7,500 acre foot entitlement to Minersville Reservoir and Irrigation Company and further to replace that part of the conservation pool lost by evaporation, seepage and transpiration, so that the conservation pool temporarily falls below the required minimum of 2,000 acre feet, the Company shall not be liable to the Department for such natural drought condition and shortage of water. However, in this regard, the Company represents and covenants that it will diligently enforce all water rights of the Company which would permit water to flow into the reservoir and will not acquiesce in nor permit any unlawful or improper diversion of water to prevent such water from reaching the reservoir, nor will the Company do or commit any overt act to cause its water rights and water entitlements in said reservoir to be defeated, diminished or encumbered in such a way that there could be an adverse affect upon the conservation pool provided for herein. The Company further specifically agrees that the right of the Department to minimum conservation pool, though subordinate to the claim of Minersville Reservoir and Irrigation Company to 7,500 acre feet per year, is superior and senior to the right of the Company to utilize any water from said reservoir for any purpose whatsoever, and the Company, therefore, can draw no water from the reservoir if the effect of such withdrawal would be to reduce the conservation pool below 2,000 acre feet.

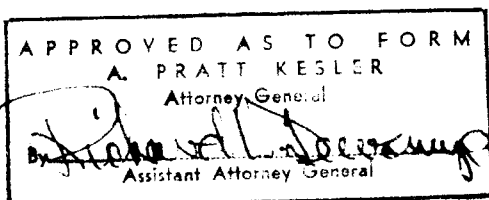
V. The Department assumes no liability whatsoever for the operation or maintenance of the Rocky Ford Reservoir, and the Department in no way shall be liable for any claim of any nature whatsoever arising from the maintenance and operation of said reservoir by the Company. The Company agrees to assume and pay all operation and maintenance costs, but if rebuilding or replacing of the dam becomes necessary by reason of earthquake,

other disaster or other unavoidable cause and not through failure to properly maintain the same and not through any other fault of Company, then and in that event reconstruction or rebuilding of the dam or such part of the dam facilities as have been so destroyed shall be reconstructed or rebuilt at the expense of Company and the Department in proportion to their respective interests.

VI. The Company shall at all times provide without charge reasonable access to the general public for fishing and recreational purposes upon the surface and for a reasonable distance around the perimeter of the reservoir on lands owned or leased by the Company. However, fishing shall not be allowed from the catwalk or tower and both parties hereto agree to cooperate in excluding fishermen from such part of the facilities.

VII. The Company shall prepare and process appropriate applications and instruments to obtain the approval of the Utah State Engineer for the use by the Company of said 2,000 acre feet for the conservation pool, and for the maintenance thereof, including, if necessary, an application for a change in the place or nature of use of said water. The Department will cooperate in executing any appropriate instrument to facilitate gaining the approval of the State Engineer for such use. The approval of the State Engineer shall be secured by the Company not later than July 15, 1965.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.



UTAH STATE DEPARTMENT OF FISH AND GAME

  
Harold S. Crane, Director

THE ROCKY FORD IRRIGATION COMPANY

By   
President

ATTEST:

  
Secretary

STATE OF UTAH

COUNTY OF SALT LAKE

On this 8 day of Oct., 1964, personally appeared before me Harold S. Crane, who duly acknowledged to me that he is the Director of the Utah State Department of Fish and Game; that he is authorized to execute the foregoing agreement for and in behalf of said Department; and that he did so execute said agreement for and in behalf of said Department of his own free will.

My Commission Expires:

Jan 22 1967  
(SEAL)

Harold S. Crane  
Notary Public

Residing at: Salt Lake City

STATE OF UTAH

COUNTY OF BEAVER

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On this 2<sup>nd</sup> day of Oct, 1964, personally appeared before me Charles Billings and Stanley M. Knight who, each for himself, did say that he, the said Charles Billings is president, and that he, the said Stanley M. Knight is the secretary of the Rocky Ford Irrigation Company, a Utah corporation, and that they executed the foregoing agreement for and in behalf of said corporation by authority of a resolution duly adopted by its board of directors and ratified by the stockholders in a special meeting called for that purpose.

My Commission Expires:

Oct 17, 1967  
(SEAL)

John M. Davis  
Notary Public

Residing at: Mt. Ford Utah

APPROVED AS TO AVAILABILITY OF FUNDS:

J. H. Larson Date 10-20-64  
Budget Officer

APPROVED:

C. R. Hopkins  
Director of Finance